in Kelantan and also in view of the fact that the appellant had a previous conviction for a similar offence, the imposition of the sentence of two years, although harsh, was not manifestly excessive.

CRIMINAL APPEAL.

Abdul Aziz Abdullah for the appellant.

Azmi bin Dato' Kamaruddin (Deputy Public Prosecutor) for the respondent.

Abdul Aziz J. (delivering oral judgment): The appellant has appealed against the sentence of two years' imprisonment imposed by the learned magistrate for a conviction under section 324 of the Penal Code for voluntarily causing hurt with an instrument for cutting, to wit, a kris.

The appellant has filed several grounds of appeal and they all relate to questions of fact. There are certain established rules under which the appeal court will interfere with the finding of the trial magistrate on questions of fact. Applying these rules to the present appeal the learned counsel for the appellant has not been able to convince me that the finding of the learned magistrate was illegal or was against the weight of the evidence or that he had raised any wrong inference from the facts. He had applied his mind correctly to the question whether the injury on the complainant was caused by a kris or by a knife and he had also applied his mind to the question whether it was such as to reduce it to a lesser offence under section 335 of the Penal Code.

Under those circumstances I would dismiss the appeal against conviction.

On the question of sentence the learned magistrate has imposed a term of imprisonment of two years and his reason for doing so was that the instrument used was a dangerous weapon and that the injury was caused to a vital part of the body, that is the complainant's neck and as a result of the injury the complainant had to be hospitalised for eight days and thereafter treated as out-patient. The appellant also had one previous conviction for causing grievous hurt under section 325 which he admitted. The learned counsel for the appellant has urged me to say that there was some element of provocation in this case and it should reflect on the sentence imposed by the court. On the other hand, the learned Deputy Public Prosecutor has urged me to consider that offences of violence are prevalent in this part of the country and that the heavy sentences imposed by the courts here for offences of this nature have proved a great deterrent as evidenced by the reduction in the number of crimes of violence. I consider having regard to the particular circumstances in Kelantan and also in view of the fact that the accused had a previous conviction for a similar offence that the imposition of the sentence of two years, although harsh, was not manifestly excessive.

The appeal against sentence is also dismissed.

Appeal dismissed.

HAJI ABDUL RAHMAN v. GOVERNMENT OF MALAYSIA & ANOR.

[O.C.J. (Abdul Aziz J.) May 2, 1966]

[Kota Bharu — Civil Suit No. 29 of 1964]

Government Suit — Writ not issued till after expiry of twelve months — Whether action would lie against Government as principal when servant of Government was not made a party — Government Proceedings Ordinance, 1956, ss. 5 & 6.

The plaintiff brought an action to recover damages arising out of a traffic accident. The accident took place on April 2, 1963. The writ was submitted to the Registry April 1, 1964, with instructions that it was not to be issued until further instructions were received from the solicitors for the plaintiff and it was not finally sealed and issued till January 18, 1965. The driver of the Government motor vehicle was not made a party to the action.

Held: as the action was not commenced within twelve months after the neglect or default complained of and as the servant of the Government was not also made a defendant to the action, the action could not proceed and must be dismissed.

CIVIL SUIT.

Wong Kim Fatt for the plaintiff.

Azmi bin Dato' Kamaruddin (Legal Adviser, Kelantan) for the defendants.

Cur. Adv. Vult.

Abdul Aziz J.: In this case the plaintiff sued the Government of the Federation of Malaysia and the Public Works Department, Kelantan, Kota Bharu for damages arising from a traffic accident. It was alleged that somebody left an unlighted steam roller belonging to Government parked on the road at night causing the deceased who was riding a motor-cycle to crash into it with fatal consequences.

At the hearing of this action the learned State Legal Adviser who appeared for the defendants raised two important preliminary objections: firstly, that the Public Works Department Kelantan is not a legal person and secondly, the action was not commenced within twelve months from the date the cause of action arose. As regards the first preliminary objection, Mr. Wong, who appeared for the plaintiff conceded that the Public Works Department has no legal status and consequently applied for amendment of the pleadings by striking out the second defendant. The pleadings were accordingly amended. The learned State Legal Adviser then submitted that under section 6(1) and (4) of the Government Proceedings Ordinance, 1956, no

proceedings could lie against the Government in tort unless it is established that by reason of neglect or default on the part of a specified public officer in the course of his employment or acting in the scope of the authority of the officer, his principal i.e. the Government was also vicariously liable.

There are, therefore, two questions to be decided: firstly, whether the action was commenced within twelve months after the neglect or default complained of and secondly, whether action would lie against the Government as principal when the servant of the Government was not also a defendant to the action.

In considering the first point I had before me the court file which showed that the writ and the praecipe were submitted to the Registry on the 1st April 1964, i.e. the last date on which the action could be commenced as the accident occurred on the 2nd April 1963. There was also a note stating a specific instruction by the solicitors for the plaintiff that the writ was not to be issued until further instructions were received from them. The writ was finally sealed and issued on the 18th January 1965. It was submitted by the plaintiff that the action was commenced when the writ and praecipe were tendered to the Registry and that the delay in the issue of the writ was due mainly to the refusal of the Attorney-General's Office to supply the name of the driver of the steam roller through whose neglect, they say, the accident occurred. It later transpired that this submission was not quite true because the request for the particulars of the steam roller driver was only made on the 7th April 1965. Learned counsel then went on to distinguish between our rules and the English Rules of the Supreme Court. Under the English Rules of the Supreme Court (the Singapore provisions are similar) the words "and thereupon the writ shall be deemed to be issued" appear but they do not appear in our rules and the date of commencement of this action, therefore, was the date on which the writ was tendered to the Registry for registration. I think there is no substance in this argument. In any event, whatever merits there may be in the plaintiff's argument is negatived by the specific request not to issue the writ until further instructions.

The second point also presents little difficulty. Section 5 of the Government Proceedings Ordinance, 1956 which prescribes the liability of the Government in tort reads:—

"....Government shall be liable for any wrongful act done or any neglect or default committed by any public officer in the same manner and to the same extent as that in which a principal, being a private person, is liable for any wrongful act done, or any neglect or default committed by his agent,...."

Section 6(1) states that:—

"(1) No proceedings shall lie against the Government by virtue of section 5 in respect of any act, neglect or default of any public officer, unless proceedings for damages in respect of such act, neglect or default would have lain against such officer personally."

and sub-section (4) of section 6 states that:—

"(6) No proceedings shall lie against the Government by virtue of section 5 in respect of any act, neglect or default of any public officer, unless that officer was at the material time employed by the Government and paid in respect of his duties as an officer of the Government wholly out of the revenues of the Government, or any fund certified by the appropriate financial officer for the purposes of this sub-section or was at the material time holding an office in respect of which the appropriate financial officer certifies that the holder thereof would normally be so paid."

All this contemplates that the identity of the officer must be ascertained and the liability of the officer must be established before the Government can be made liable. In my view, therefore, the preliminary objections taken by the State Legal Adviser are well taken and the objections will be allowed.

The action will, therefore, be dismissed with costs.

Action dismissed.

Solicitors: *Wan Mustapha & Co.*

LIM KIAT MOY v. HAMZAH

[O.C.J. (Raja Azlan Shah J.) May 7, 1966]

[K.L. — Originating Summons No. 80 of 1966]

Land Laws — Caveat — Application to extend period of caveat — Meaning of "extend" — Whether application must be made before expiry of caveat — National Land Code (Act No. 56 of 1965), s. 326.

The respondent was the registered proprietor of a piece of land. By an agreement dated December 13, 1963, he agreed to sublease the land to the applicant. On December 30, 1965, the applicant lodged a caveat against the said land. On March 21, 1966, the collector served upon the applicant a notice of intended removal of the said caveat under the provisions of section 326 of the National Land Code (Act No. 56 of 1965). The notice specified the period of one month at the expiry of which the caveat would lapse. On April 8, 1966, the applicant made an application to the court to extend the life of the caveat. On April 29, 1966, the collector entered a memorial in the register removing the caveat. The application of the applicant came on for hearing on May 2, 1966. A court order not to remove the caveat had not been granted and served on the collector.

Held: as no court order had been served on the collector before the expiry of the period of one month specified in the notice of the collector, the collector was right in removing the caveat and the application must therefore be dismissed as, the period of the caveat having expired, it was not possible for the court to extend it.

Cases referred to:—

(1) *Chow E Wha* v. *Registrar of Title & Ors.* [1948-49] M.L.J. Supp. 119.

(2) *Direct United States Cable Co.* v. *Anglo-American Telegraph Co.* (1876-77), L.R. 2 App. Cas. 412.